From: grouch
To: Microsoft ATR
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Subject: Microsoft Settlement

The "Proposed Final Judgement" in the case of "Civil Action No. 98-1232 (CKK)" appears to be another recipe for failure in a long line of such failures by the Department of Justice with regards to Microsoft. It appears to have no strength with which to interrupt the predatory practices of which Microsoft has been found guilty. It appears to have no ability to restore competition in a market which has been devastated by the illegal leveraging of monopoly power for which Microsoft has been found guilty. It appears completely inadequate to anticipate the future moves Microsoft may make to continue illegally leveraging their existing and expanding monopoly powers.

The provisions of the Proposed Final Judgement appear on the surface to be adequate. However, there are so many exceptions and phrases of "nothing ... shall prohibit" that the settlement is rendered little more than a catalog of past behaviors that the Department of Justice meekly requests that Microsoft not repeat, if it's not too inconvenient for Microsoft. One provision goes so far as to give Microsoft an easy way to circumvent all of the provisions regarding APIs; they only have to tie those APIs somehow to security measures and claim revealing those APIs would compromise security. It should be remembered how Microsoft claimed their browser was a necessary and integral part of the operating system. Even the definitions are inadequate for they allow much leeway for Microsoft to continue expanding their monopoly into other marketing areas.

The Proposed Final Judgement does little to address the applications barrier to entry. Every provision that prohibits retaliation by Microsoft against OEMs, ISVs, or IHVs, includes loopholes concerning security or intellectual property rights which allow Microsoft an easy side-stepping of the prohibitions. Additionally, nothing is done about the network effects of Microsoft products in creating the barriers to competitors. The data formats of all Microsoft software will continue to be a fearsome weapon preventing the use of any competing product. So long as Microsoft is allowed to hold data hostage to its file formats, the monopoly power is assured and can be leveraged to extend that monopoly in other areas. No competitor may make inroads on a network on which Microsoft has established its lock on the customers data.

Once again, while the Department of Justice picks nits with the past, Microsoft has moved on to other ways of ensuring monopolistic power over computer users. The findings of fact showed how Microsoft effectively eliminated the threat to its monopoly from middleware products. The proposed final judgement does nothing to remedy this, and in fact section III.H. has two exceptions that handily provide the means for

Microsoft to extend its monopoly into the server market with ActiveX ties between Microsoft middleware and Microsoft servers. As for Sun's Java, Microsoft is well underway to using its current monopoly powers to supplant Java with .NET and C#, again outpacing the Department of Justice as it has repeatedly in the past.

I do not pretend to know the protocols and fine points of the legal profession, but it looks like the criminal in this case gets off without paying for the crime and gets to define much of the contraints, or lack thereof, placed on the criminal's future actions. I see no punishment, no restitution, no barrier to Microsoft continuing to harm customers, competitors, and the computing industry in general in this proposed final judgement.

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